

立法會 *Legislative Council*

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Panel on Manpower

Background brief prepared by the Legislative Council Secretariat for the meeting on 19 January 2021

Alignment of statutory holidays with general holidays

Purpose

This paper summarizes the major concerns and views expressed by members of the Panel on Manpower ("the Panel") on alignment of statutory holidays with general holidays since the Fourth Legislative Council ("LegCo").

Background

2. According to the Employment Ordinance (Cap. 57) ("EO"), an employee, irrespective of his or her length of service, is entitled to 12 days of statutory holidays a year (commonly referred to as "labour holidays"). An employee is further entitled to holiday pay if he or she has been employed under a continuous contract¹ for three months or more before a statutory holiday. For an employer who cannot arrange his or her employee to take leave on a statutory holiday, the employer may grant the employee an alternate holiday within a specified period if he or she notifies the employee not less than 48 hours in advance. Failure to grant statutory holiday to an employee is a prosecutable offence under EO, with maximum penalty of \$50,000.

3. The General Holidays Ordinance (Cap. 149) ("GHO") specifies 17 days of general holidays, in addition to Sundays, in each year on which banks, educational establishments, public offices and government departments need not open. GHO does not oblige employers to grant their employees day-offs

¹ Under EO, an employee who has been employed continuously by the same employer for four weeks or more and has been working for at least 18 hours each week is regarded as being employed under a continuous contract.

during general holidays nor to offer pay to employees on general holidays. Whether an employee has day-offs and whether these day-offs are with pay or not are matters agreed between the employer and the employee concerned and not governed by law.

Deliberations of the Panel

Disparity in the number of holidays for employees

4. Members expressed concern that different numbers of holidays were provided for different employees under EO and GHO. At the Panel meeting on 10 February 2015, members were briefed on the findings of a survey on statutory holidays and general holidays taken by employees in Hong Kong conducted by the Census and Statistics Department in 2011. While expressing dissatisfaction about the unduly long time taken for the release of survey findings, members noted with concern that among the employees entitled to paid statutory holidays, only 49.5% of them were taking general holidays. Employees who took statutory holidays only generally worked more days a week than those who also took general holidays.

5. Some members were of the view that the non-alignment of statutory holidays with general holidays was an unfair and discriminatory policy against employees engaged in service industries, especially grassroots workers, who were normally provided with 12 days of statutory holidays with pay in a year. Given the differentiation between blue-collar and white-collar workers had become less distinct following economic restructuring in Hong Kong over the years, most members were of the view that it was high time for the Administration to review the respective entitlements of statutory holidays and general holidays under EO and GHO. They called on the Administration to expedite the alignment of the statutory holidays with the general holidays, i.e. increasing the statutory holidays to 17 days in a year, so as to standardize the leave entitlement of all employees and further promote family-friendly employment practices. Increasing the number of statutory holidays could also encourage more people to engage in various holiday activities such as shopping or dining out, thereby creating more business opportunities for the catering sector and retail industry.

6. Some other members, however, cautioned that alignment of the number of statutory holidays with general holidays would incur additional staff cost, which would impose a heavy financial burden on employers, in particular the small and medium-sized enterprises. Employers of the foreign domestic helpers might also find it difficult to afford the additional cost arising from an increase in the

number of statutory holidays. Given the far-reaching implications on Hong Kong's society and economy, it was pointed out that the impact on business operation and costs should be carefully assessed in contemplating increase in the number of statutory holidays.

7. According to the Administration, statutory holidays and general holidays, instead of making a distinction between blue- and white-collar workers at the outset, were two types of holidays with different nature and backgrounds. General holidays, as provided for under GHO, were days on which banks, educational establishments, public offices and government departments needed not open and they were primarily holidays for the relevant establishments. Granting of general holidays or not and whether or not they should be paid was entirely a matter of voluntary arrangement between the employers and their employees. Statutory holidays or the so-called "labour holidays", on the other hand, were benefits accorded to employees which employers had to provide under EO. Employers were encouraged to offer their employees benefits over and above the statutory minimum set by EO, having regard to their operational needs and individual circumstances.

8. The Administration further advised that it constantly reviewed the labour legislation in the light of the changing social circumstances and the pace of economic development to ensure that a reasonable balance between the interests of employers and employees was struck, and that the statutory rights and benefits accorded to employees would be progressively improved according to the consensus reached by employer and employee representatives at the Labour Advisory Board ("LAB").

9. Some members held the view that while improving employees' rights and benefits was indisputable, the full support of employers was crucial to the effective implementation of new initiatives. The Administration should formulate policy on enhancing employees' holiday entitlements with appropriate financial incentive to the employers and take forward the enhancement in a gradual manner.

Latest development

10. Among the 10 new livelihood initiatives announced by the Chief Executive on 14 January 2020, it was proposed to increase progressively the number of statutory holidays so that it would be on par with that of general holidays. On 14 October 2020, LAB discussed the Administration's proposal of increasing statutory holiday by one day in every two years until the total number of statutory holidays matched that of the general holidays. According to the Administration, LAB members would need to consult the trades and

organizations they represented. Another LAB meeting would be held later to further discuss the proposal.

11. At the Panel meeting on 7 January 2021 to receive a briefing from the Secretary for Labour and Welfare on the Chief Executive's 2020 Policy Address, members were advised, among others, that the Government hoped that an implementation plan acceptable to both employees and employers could be agreed to in order to conclude this controversial labour welfare issue and it would strive to introduce the enabling bill into LegCo for scrutiny within the term of the current Government. The Administration will brief the Panel on its preliminary legislative proposal at its meeting on 19 January 2021.

Relevant papers

12. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
13 January 2021

**Relevant papers on the
alignment of statutory holidays with general holidays**

Committee	Date of meeting	Paper
Panel on Manpower	17.3.2011 (Item VI)	Agenda Minutes
Panel on Manpower	20.10.2011 (Item II)	Agenda Minutes
Panel on Manpower	27.1.2014 (Item IV)	Agenda Minutes
Panel on Manpower	10.2.2015 (Item IV)	Agenda Minutes
Legislative Council	10.6.2015	Official Record of Proceedings (Question 16)
Panel on Manpower	17.10.2017 (Item III)	Agenda Minutes
Panel on Manpower	16.10.2018 (Item III)	Agenda Minutes
Panel on Manpower	8.11.2019 (Item I)	Agenda Minutes